

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4839 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
DHORAJI MUNICIPALITY

Versus

STATE OF GUJARAT  
-----

Appearance:

MR PM THAKKAR for Petitioner  
MR B.Y.MANKAD, AGP for Respondent No. 1  
NOTICE SERVED for Respondent No. 3  
-----

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. Petitioner Dhoraji Municipality has preferred  
this petition under Article 226 of the Constitution of  
India and has prayed for issuance of a writ of mandamus

or any other appropriate writ, order or direction declaring the act of respondent authority levying water charges from the petitioner municipality for supply of water to the citizens of Dhoraji from "Fofal Dam" and "Bhadar Dam", as illegal, unconstitutional, null and void. It is also prayed that respondents should be directed to ensure the petitioner municipality with the adequate water supply from Fofal and Bhadar rivers for meeting the needs of people of Dhoraji. The action of the respondent authority to claim water charges from the petitioner municipality as contained in the communications dated 7.2.1986 at Annex.B and dated 6.7.1990 at Annex.E is also challenged and the petitioner has prayed to quash and set aside the aforesaid communications at Annex.B & E respectively.

2. I have heard learned counsel appearing for the petitioner and learned AGP Mr. Mankad for the respondents.

3. The case of the petitioner municipality is that as the town Dhoraji is on the bank of rivers Fofal and Bhadar, it is the right of the residents of Dhoraji to have water of two rivers free of charge and the decision of levying water charges from the petitioner municipality for supply of water to the residents of town Dhoraji from aforesaid two dams erected on rivers Fofal and Bhadar, requires to be quashed and set aside. Municipality approached the Government by filing representation for waiver of levy, but the State Government, instead of waiving the charges, offered installments to the petitioner municipality for the payment of charges demanded from it. It seems that the petitioner municipality is tempted to file this petition because of one decision of this Court in Spl.C.A. No. 641/77 (Coram: S.H.Sheth, J ). The said petition was filed by Veraval-Patan Joint Municipality wherein the municipality had sought for supply of adequate water from Hiran River for meeting the needs of residents of Veraval. Spl.C.A. No. 641/77, after hearing the parties, was allowed and action of the government of charging for water supply was quashed. After going through the petition, it transpires that the case of the petitioner is mainly based on two aspects; firstly that the residents of Dhoraji were getting free water supply since years as both these rivers flow from the outskirts of town Dhoraji and hence action of levying water charges is violative of easementary rights, and secondly that financial position of the municipality is very weak and inadequate financial resources have made the municipality incapable of making payment and it is the duty of the State to provide

drinking water to the citizens and hence the recovery of levy amount is illegal and unconstitutional.

4. It is not a matter of dispute that judgment rendered in Spl.C.A. No. 641/77 has been reversed by the Division Bench of this Court while dealing with L.P.A. No. 76/78 (Coram: G.T.Nanavati & K.J.Vaidya, JJ). Division Bench, while reversing the decision of the learned Single Judge, has held that the case put forward by Veraval-Patan Joint Municipality was not the case of easementary right and there is a distinction between the easementary right and riparian right. Bombay Irrigation Act, 1879 was enacted to make provision for the construction, maintenance and regulation of canals for the supply of water therefrom and for levy of rates for water so supplied from the dams or water reservoirs. Act itself is self-explanatory and sec.44 of the Act provides for determination of a rate of supply of canal water. Comparing the rate of water canal, the charge which is made leviable from the petitioner municipality is very meagre. Undisputedly, town Dhoraji is situated in the down-stream of both these dams and residents are getting advantage of seepage of water through the dam over and above the actual water flow from these dams. Mr. Mankad, learned AGP has drawn attention of this Court to the fact that town Jetpur which is at a distance of 18 to 20 kms. from town Dhoraji which is on the bank of river Bhadar, is also supplied water from Bhadar Dam. Jetpur Municipality had approached this Court with similar type of prayer invoking the jurisdiction of this Court under Article 226 of the Constitution of India by filing Spl.C.A. No. 475/83 and this Court, after considering all relevant aspects, was pleased to dismiss the petition holding that there is no merit in the petition. Copy of the judgment dated 31.8.1994 delivered by this Court (Coram : D.G. Karia, J) in the aforesaid writ petition is tendered today before this Court for perusal. After going through the said judgment, I am satisfied that the facts of that petition are similar to the facts of the present petition and ratio laid down in the aforesaid judgment interpreting relevant provisions of the Bombay Irrigation Act, 1879, squarely applies to the facts of the present case. At present Jetpur Municipality is getting water subject to the payment to the State Government. Affidavit-in-reply filed by Shri Purshottamdas Tribhbovandas Patel, Under Secretary (I), N.W.R. Department, Sachivalaya, clarifies the legal as well as factual position. The petitioner municipality has not filed any rejoinder controverting the averments made in the aforesaid affidavit-in-reply. It is clear from the said affidavit that during the scarcity year of

1974-75, no water was available from river Bhadar and so Dhoraji Municipality demanded permanent water supply from Fofal Dam and Government had decided to supply water for Dhoraji subject to the payment of water charges as per the prevailing rates. Dhoraji Municipality had accepted the conditions for grant of water supply and bills for water charges for net drawal are raised. Certain amount has been paid by the municipality. Hence, according to the respondents, filing of this petition is an after-thought. Undisputedly, town Dhoraji is situated at a distance of 2 to 3 kms. from actual river bed and at a distance of 15 kms. from Fofal Dam and the statutory body constituted under Gujarat Municipalities Act or under any other law constituting local-self government, can claim status of riparian owner, but such right cannot be claimed by the petitioner.

5. For the reasons aforesaid, this petition fails and is hereby dismissed. Rule is discharged. Interim relief, if any, stands vacated. No costs.

6.10.2000 [ C.K. BUCH, J ]

\*rawal